IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4756 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VISNAGAR JOOTH VIVIDH KARYAKARI SAHAKARI MANDALI

Versus

MR.A A PATEL,Dy.SECRETARY,(CO-OP.APPEAL) AND OTHERS

Appearance:

MR BS PATEL for Petitioner

MR MA BUKHARI AGP for Respondent No. 1

MR NAVIN K PAHWA for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 15/03/2000

ORAL JUDGEMENT

Rule. Mr. M.A.Bukhari, learned AGP appears and waives service of Rule for and on behalf of respondent no.1 and Mr. N.K.Pahwa, learned counsel appears and

waives service of Rule for and on behalf of respondent no.2. At the request of learned counsel for the petitioner, respondent no.3 is ordered to be deleted.

2. The case of the petitioner was that it was a society registered under the Gujarat Co-operative Societies Act, 1961. In March, 1996, an election of the Market Committee was held. A rfesolution was passed by the second respondent on September 9, 1999 cancelling allotment of plot-cum-godown in favour of petitioner society. A revision application was filed by the petitioner before the State Government under Section 48 of the Gujarat Agricultural Produce Market Act, 1963 (hereinafter referred to as " the Act "). Section Officer of the Government, however, by a communication dt. 26th February, 1999 informed the petitioner that before invoking Section 48 of the Act, and praying to the State Government to exercise revisional power in favour of the petitioner, it should approach Director of Agricultural Marketing and Rural Finance, under Section 47 of the Act by filing an appeal and as it was not done, the revision application was filed. Against the said decision taken by the first respondent, the present petition is filed.

3. When the matter was placed before the learned Single Judge on October 22, 1999, the following order was passed :-

" The learned counsel for the petitioner submits that on correct reading of the provisions of Sections 47 and 48 of the APMC Act, the only remedy available to the petitioner against the impugned decision of the APMC is to file a revision application before the State Government under Section 48 of the APMC Act and that no appeal lies before the Director under Section 47 of the APMC Act.

Notice returnable on 18.11.1999 ".

3. I have heard the parties.

4. Mr. Patel, learned counsel for the petitioner contended that there is an error apparent on the face of record committed by the State Government, and there is jurisdictional error in interpreting the provisions of Section 48 of the Act. He submitted that the power of the State Government is coupled with duty and when revisional jurisdiction of the State Government was invoked under Section 48 of the Act by the petitioner, it

was incumbent on the part of the State Government to pass an appropriate order on the merits of the matter, and it was not open to it to direct the petitioner to file an "appeal" before the Director of Agricultural Marketing and Rural Finance, under Section 47 of the Act. He submitted that the even on legal point, State Government was not right in directing the petitioner to file an appeal to the Director. Looking to Section 47, in the submission of the learned counsel for the petitioner, no appeal lies. Even if it is considered that what was sought to be conveyed by the State Government was to invoke revisional jurisdiction of the Director, ambit and scope of power under Section 47 of the Act, in juxta position of Section 48, would be totally different, and in the facts and circumstances of the case, the State Government ought not to have directed the petitioner to approach the Director under Section 47 of the Act.

5. The learned Assistant Government Pleader for the State submitted that though the expression "appeal" was used by the State Government, what was conveyed was first to invoke revisional jurisdiction of the Director under Section 47 of the Act and then to approach the State Government under Section 48 of the Act. Such a discretionary order may not be interfered with. Mr. Pahwa supported Mr. Bukhari on this point.

6. In the facts and circumstances of the case, in my opinion, the order passed by the State Government deserves to be quashed and set aside. For the purpose of understanding the scope and ambit, the relevant provisions of the Act, namely Sections 47 and 48 of the Act, may be quoted in extenso :-

Section 47 -

Power of Director to call for proceedings etc.. The Director shall have power :-

(a) to call for any proceedings of a market committee or an extract therefrom, any book or document in the possession or under control of a market committee and any return statement, account or report which the Director thinks fit to require such market committee to furnish, and

(b) to require a market committee to take into consideration -

(i) any objection which appears to

the Director to exist to the doing of anything which is about to be done, or is being done, by such market committee; or

(ii) any information which the Director is able to furnish, and which appears to the Director to necessitate the doing of anything by the market committee,

and to make a written reply, to the Director within a reasonable time stating its reasons for not doing or not desisting from doing anything.

Section 48-

Powers of State Government to call for proceedings or market committee and to pass orders thereon-

The State Government may at any time call for and examine the proceedings of the Director or of any market committee for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by the Director or the market committee. In any case in which it appears to the State Government that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government may pass such order thereon as it thinks fit.

7. Looking to the above provisions, it is clear that the nature and scope of powers to be exercised by the Director under Section 47 of the Act and by the State Government under Section 48 of the Act are totally different. Under Section 47, the Director has power " to call for any proceedings of a market committee or an extract therefrom, any book or document in the possession or under control of a market committee and any return statement, account or report which the Director thinks fit to require such market committee to furnish ". It also enables the Director to require a market committee to take into consideration (i) any objection which appears to him to exist to the doing of anything which is about to be done, or is being done, by such market committee; or (ii) any information which the Director is able to furnish, and which appears to the Director to necessitate the doing of anything by the market committee and to make a written reply, to the Director within a

reasonable time stating its reasons for not doing or not desisting from doing anything. It further authorises the Director to call for the reasons for not complying with the provisions of Clauses (a) and (b) of Section 47 of the Act. But the power of the Director ends there.

8. On the other hand, under Section 48 of the Act, the State Government has very wide and extensive power. Under the said provision, the State Government may, at any time, call for and examine the proceedings of the Director or of any market committee for the purpose of satisfying itself as to the legality or propriety of any decision or order passed ....Where it appears to the State Government that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government may pass such order thereon as it thinks fit.

9. Thus considering the extent of power also, it is clear that the power of the State Government does not cease with calling for certain information or decision as the Director has under Section 47 of the Act. Under Section 48, the State Government can decide the legality or propriety of any order or decision passed by the market committee, and if in the opinion of the State Government, such order or decision requires modification, annulment or reversal, it can also pass such order. In the circumstances, it cannot be said that the State Government was justified in directing the petitioner to file an appeal or invoke revisional jurisdiction of the Director. As submitted by the learned counsel for the petitioner, it was obligatory on the part of the State Government to pass appropriate order on merits under Section 48 of the Act. As there was failure to exercise jurisdiction by the State Government, the communication deserves to be set aside, and it is accordingly set aside. The State Government is directed to take up the revision application filed by the petitioner for hearing and decide the same in accordance with law.

10. I have merely interpreted Sections 47 and 48 of the Act, and nothing more. I do not wish to express any opinion on merits of the matter and I may not be understood to have expressed any opinion one way or the other. As and when the matter will be taken up for hearing by the State Government, it will decide the same in accordance with law without being influenced by any observation made by me hereinabove. It is also directed that since the matter pertains to allotment of plot, the State Government will decide the same as expeditiously as possible, preferably within two months from the date of

receipt of the writ of this Court. The petition is accordingly allowed. Rule made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

Date:15/3/2000. (C.K.THAKKER, J.)
ccshah